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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,555

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George Miller

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EXAMINER

PATEL, BHARAT C

ART UNIT

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3724

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/528,555	Applicant(s) MILLER, GEORGE	
	Examiner BHARAT C. PATEL	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-12, 14-20 and 24-51 is/are pending in the application.
- 4a) Of the above claim(s) 3-12, 14-18, 24-30, 33 and 36-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 5, 19, 20, 31-35, 67 and 68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/23/09 has been entered.

Claim Objections

2. Claims 67-68 are objected to because of the following informalities: In line 9 of each claim 67 & 68, "plane" is believed to be in error for --plane;--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5, 19-20 and 67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 19-20 recite the limitation "the protection member" in lines 1-2 and line 2, of claims 5 & 19-20, respectively. There is insufficient antecedent basis for this limitation in the claim 67. therefore, claims 5, 19-20 & 67 are indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 67, 2 and 31-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Herr 3,676,928.

Re claim 67, Herr discloses a body 12, cutting means 18, 42, supported on the body 12 and configured to cut substantially perpendicularly through a cast arranged in a cast plane, said cutting means comprising a stationary first portion 42 and a moveable second portion 18, said second portion being supported at pin 20 for pivotal motion relative to the first portion per Fig. 1, wherein each portion comprises a single cutting edge configured to cooperate to cut along a common cutting plane which is aligned substantially perpendicularly with the cast plane comprising an electric drive 14 supported on the body and drivingly connected to said second portion 18 to pivot said second portion relative to said first portion 42 through a path which moves the single cutting edge of the second portion 18 through the cast plane from one side thereof and causes a cast positioned between the cutting edges of the first and second portions in the cast plane to be pressed against the single cutting edge of the first portion, such that the cutting edges of the first and second portions effect cutting through the cast plane from opposing sides by a shearing action per page 2, col. 2, lines 41-44, per Figs. 1-3. It should be noted that the first portion 42 is capable of being stationary. The Applicant

has not defined or claimed the specific structure that produces specific scissor type shearing motion. Therefore, Herr satisfies the claimed subject matter.

Re claim 2, Herr discloses that the cutting means 18 is adapted for removing a strip of material from the cast. The device taught by Herr is capable of producing the strip of material as that of the size of the cutter or knife 18.

Re claim 31, Herr discloses that a leading edge of the second portion 18 of the cutting means is chamfered per Fig. 1.

Re claim 32, Herr discloses that the first portion 42 defines an aperture which is chamfered at one side per Fig. 1. Examiner considers an opening between the tip 52 and the 42 as an aperture and the tip portion of the 42 is tapered per Fig. 1.

Re claim 34, Herr discloses that the cutting means 18, 42, is adapted to remove continuous strips of material from a cast and the first portion 42 of the cutting means comprises a strip exit, as curved rear top portion on 42 per Fig. 1, to allow a strip of the cast which is being removed to pass therethrough.

Re claim 35, Herr discloses that the strip exit, as top surface and rear portion of the top surface of 42 per Fig. 1, comprises tapered sides, which taper outwards, away from the aperture of the first portion 42 per Fig. 1.

7. Claims 67-68, 2, 5, 19-20 and 31-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Sacrey 2,015,535.

Re claims 67 and 68, Sacrey discloses a body 1-3, cutting means 20, 51, supported on the body 2 and configured to cut substantially perpendicularly through a cast arranged in a cast plane, said cutting means comprising a stationary first portion 51

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and a moveable second portion 22, said second portion being supported at pin 26 for pivotal motion relative to the first portion per Fig. 3, wherein each portion comprises a single cutting edge configured to cooperate to cut along a common cutting plane which is aligned substantially perpendicularly with the cast plane comprising an electric drive 4-5 supported on the body and drivingly connected to said second portion 22 to pivot said second portion relative to said first portion 51 through a path which moves the single cutting edge of the second portion 22 through the cast plane from one side thereof and causes a cast positioned between the cutting edges of the first and second portions in the cast plane to be pressed against the single cutting edge of the first portion, such that the cutting edges of the first and second portions effect cutting through the cast plane from opposing sides by a shearing action per page 2, col. 2, lines 41-44, per Figs. 1-5 and 8; and a protection member as outside contour of the stationary portion 50 supported by the body 1-2 and positioned on one side of the cutting plane to be positioned between the cast being operated upon by cutting means 20, 51, and the patient, to protect the skin of the patient per page 2, col. 2, lines 41-44, per Fig. 3; It should be noted that the motion of cutting by the second portion 22 with respect to the first portion 50-51 is by the shearing action amongst two edges, one from the cutter 22 and the other from the recess 51. The Applicant has not defined or claimed the specific structure that produces specific scissor type shearing motion. Therefore, Sacrey satisfies the claimed subject matter.

Re claim 2, Sacrey discloses that the cutting means 22 is adapted for removing a strip of material from the cast. The device taught by Sacrey is capable of producing the strip of material as that of the size of the cutter or knife 22.

Re claim 5, Sacrey discloses that the protection member 50 is releasably coupled to the body 1-2 per Figs. 2 & 4 per page 2, col. 2, and lines 12-35.

Re claim 19, Sacrey discloses that the first portion 51 is located on the protection member 50 per Figs. 2 and 4.

Re claim 31, Sacrey discloses that a leading edge of the second portion 22 of the cutting means is chamfered per Figs. 4 & 8.

Re claim 32, Sacrey discloses that the first portion 51 defines an aperture which is chamfered at one side per Figs. 4 & 8.

Re claim 34, Sacrey discloses that the cutting means 22, 51, is adapted to remove continuous strips of material from a cast and the first portion 50 of the cutting means comprises a strip exit, as bottom tapered surface below 51 inside 50 per Fig. 4, to allow a strip of the cast which is being removed to pass therethrough.

Re claim 35, Sacrey discloses that the strip exit, as bottom tapered surface below 51 inside 50 per Fig. 4, comprises tapered sides, which taper outwards, away from the aperture of the first portion 50 per Figs. 1, 3 and 4.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 19-20, 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herr 3,676,928 in view of Wang 6,308,421.

Re claim 19, Herr teaches the invention as claimed as discussed above except that the first portion 42 is located on a protection member. Wang teaches that the first portion 11 is located on a protection member 5 per Fig. 1 & 4.

It would have been obvious to one having ordinary skill in the art at the time of invention to provide Herr's stationary blade 42 with a support arrangement, as taught by Wang, in order to allow for cutting different configurations of work pieces per col. 1, lines 36-40 per Figs. 1-2 & 4-5.

Re claim 5, the modified device of Herr teaches that the protection member (Wang, 5) is releasably coupled to the body (Wang, 11, per Fig. 1).

Re claim 20, the modified device of Herr teaches that the first portion (Wang, 11) is mounted separately from the protecting member (Wang, 5, per Figs. 1 & 5).

Re claim 68, Herr teaches a body 12, cutting means 18, 42, supported on the body 12 and configured to cut substantially perpendicularly through a cast arranged in a cast plane, said cutting means comprising a stationary first portion 42 and a moveable second portion 18, said second portion being supported at pin 20 for pivotal motion relative to the first portion per Fig. 1, wherein each portion comprises a single cutting edge configured to cooperate to cut along a common cutting plane which is aligned substantially perpendicularly with the cast plane comprising an electric drive 14 supported on the body and drivingly connected to said second portion 18 to pivot said

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second portion relative to said first portion 42 through a path which moves the single cutting edge of the second portion 18 through the cast plane from one side thereof and causes a cast positioned between the curing edges of the first and second portions in the cast plane to be pressed against the single cutting edge of the first portion, such that the cutting edges of the first and second portions effect cutting through the cast plane from opposing sides by a shearing action per page 2, col. 2, lines 41-44, per Figs. 1-3. It should be noted that the first portion 42 is capable of being stationary. However, Herr fails to teach a protection member supported by the body and positioned on one side of the cutting plane to be positioned between the cast being operated upon by cutting means, and the patient, to protect the skin of the patient. Wang teaches a protection member 5 supported by the body 11 and positioned on one side of the cutting plane to be positioned between the cast being operated upon by cutting means 31, and the patient, to protect the skin of the patient per Figs. 1-2 & 4-5.

It would have been obvious to one having ordinary skill in the art at the time of invention to provide Herr's stationary blade 42 with a support arrangement, as taught by Wang, in order to allow for cutting different configurations of work pieces per col. 1, lines 36-40 per Figs. 1-2 & 4-5.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sacrey 2,015,535.

Sacrey teaches the invention as claimed as discussed above. However, Sacrey fails to teach that the first portion 51 is mounted separately from the protecting member 50. Thus Sacrey teaches an integrated piece of first stationary portion and the

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protecting member that can be separated and be separately mounted when this integrated part made out of two separate parts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to separately mount the protection member to the first portion in order to allow for easy repair or replacement of the first portion only, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Response to Arguments

8. Applicant's arguments with respect to claims 67-68 have been considered but are moot in view of the new ground(s) of rejection under 35 U.S.C. 102(b) as being anticipated by Herr 3,676,928; and under 35 U.S.C. 103(a) as being unpatentable over Herr 3,676,928 in view of Wang 6,308,421.

Applicant's arguments filed on 11/23/09 have been fully considered but they are not persuasive because the prior art of Sacrey still reads on the amended claims as discussed above in the rejection of the respective claims. In the Remarks, the Applicant argues that Sacrey does not teach shearing motion; and first and second portions having a single cutting edge.

In response to the above argument, the Examiner respectfully disagrees as discussed in the above rejections of claims 67 & 68. It should be noted that the motion of cutting by the second portion 22 with respect to the first portion 50-51 is by the shearing action amongst two edges, one from the cutter 22 and the other from the recess 51. The Applicant has not defined or claimed the specific structure that produces

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specific scissor type shearing motion by pivoting the cutter in a specific orientation.

Therefore, Sacrey satisfies the claimed subject matter.

Conclusion

12. The prior arts made of record (as in the previous rejection) and not relied upon are considered pertinent to applicant's disclosure. Allen (4532707), Roth (3710445) and Kimura (5457889) teach reciprocating device capable of cutting the cast material; Hobgood (2003/0065334) teaches a cast removal device attachable to the reciprocating device for cast material cutting; and Hudnutt (4625405) teaches a device for cutting cast material.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BHARAT C. PATEL whose telephone number is (571)270-3078. The examiner can normally be reached on Monday-Friday, alt. Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 24502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bharat C Patel/
Examiner, Art Unit 3724
3/11/10.

/Ghassem Alie/

Primary Examiner, Art Unit 3724